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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/707,603	12/23/2003	Lonnie Dee King		1602

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LONNIE DEE KING
1021 OAKWOOD CIRCLE
KELLER, TX 76248

EXAMINER

REICHLE, KARIN M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 07/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/707,603	Applicant(s) KING, LONNIE DEE	
	Examiner Karin M. Reichle	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) 2 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 5-8-06 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of the invention of Group I in the reply filed on 5-8-06 is acknowledged.

2. Claim 2 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 5-8-06.

Response to Amendment

3. The following Office action is based on the added sections set forth on pages 2-3 of the 5-08-06 response, the originally filed specification as amended by the replacement paragraphs on pages 4-8 of the 5-8-06 response, the sheet of Figures 1-6 as filed 5-8-06, pending claim 1 as filed 5-8-06. It is noted that the paragraph numbers of the replacement paragraphs are no longer designated the same, i.e. now "[Para 1]" rather than "[0001]" and that the paragraphs added have not been numbered, e.g. 1.1. Also, paragraph 11, line 1 still does not comply with 37 CFR 1.121 because the numeral 4 has not been struck thru. Paragraph 17, line 1 also does not comply with 37 CFR 1.121 since "By" is not shown as struck through and --by-- added and underlined. Claim 1 labeled with the status "(Previously amended)" still includes markings on line 2 thereof. Applicant's next response, if any, should provide compliant corrections to the paragraph 11 and the claim 1.

Specification

Drawings

4. The drawings were received on 5-8-06. These drawings are approved by the Examiner. However see the following discussion with regard to the drawings and the PTO-948 which accompanies this action.

Description

5. The disclosure is objected to because of the following informalities: In the added "CROSS-REFERENCE TO RELATED APPLICATIONS" section the applications or references cited should be Applicant's own applications which are related to the subject matter of the instant application, if any, not prior U.S. Patents to others. In the first paragraph of the added "BRIEF SUMMARY OF THE INVENTION" section, line 3, "the applicator" should be --an applicator material--. Also, since it is unknown what the width "of the round sticks used by traditional swabs" is, i.e. no specific dimension have been disclosed, the width of the body frame which is double that is also unclear. In the second paragraph of such section, line 2, "the distance of" should be deleted. On line 3, after "applicator", --material-- should be inserted. In paragraph 5, line 2, "single cutout" should be --cutting blade-- to be consistent. In paragraph 11, in addition to the issues already discussed, on line 3, "distance" should be deleted, on line 4, "area", should be --material-- and before "13", "cutout" should be --cutting blade--. In paragraph 14, line 1, "cutout 13 along" should be --cutting blade 13 at--. In paragraph 16, line 3, and paragraph 17, line 1, "10" should be --11--.

Appropriate correction is required.

Claim Objections

6. Claim 1 is objected to because of the following informalities: on line 1, “two primary components” should be deleted. On lines 1-2, “made of preformed plastic” should be --and-- and on line 1, before “body”, insert --plastic--. On line 5, “said body frame width” should be --a width of said body frame-- and “the”, first, should be deleted. On line 6, after “applicator”, --material-- should be inserted. On line 8, “is formed” should be --has--. The last two lines should be deleted. Appropriate correction is required.

Claim Rejections - 35 USC § 112

7. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Since it is unknown what the width “of the round sticks used by traditional swabs” is, i.e. no specific dimension have been disclosed or claimed, the width of the body frame which is double that is unclear. It is also unclear whether Applicant is claiming the applicator material affixed to the body frame, see lines 3-4, or not, lines 6-7? If so, “can be” on line 6 should be --is--. On the last two lines the structure defined by the language “or any suitable similar type of material, is unclear, i.e. similar how? Fibrous? Rubber? Foam? Also, is the applicator material one of the materials listed or not, i.e. “will be”? See changes to claim language suggested in the previous paragraph.

Claim Language Interpretation

8. Due to the reasons set forth in paragraphs 5-7 supra, the invention is considered a swab comprising a straight, flat, elongate plastic body with opposite ends and rounded edges which body is wider than it is thick and has a square cutout, see discussion infra, at each end of the body resulting in an length which is offset, the cutout at one end being inverse of that at the other and an absorbent applicator material attached at the ends of the frame. With regard to the terminology "cutout", such is defined by the dictionary as "something cut out or off something else; also : the space or hole left after cutting" and "space" is defined as "a blank or empty area". Therefore, claim 1 is considered a product by process claim, see MPEP 2113. As set forth in MPEP 2113, even though product by process claims are limited by and defined by the process, i.e. the processing of cutting here, determination of patentability is based on the product itself, i.e. the end product. If the product in the product by process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by another process. The end product as best understood of claim 1 would be that discussed supra and having a space or hole which is square in shape at each end resulting in a length of the body frame which is offset.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kaufman '762 in view of Bedford '994.

See the Claim Language Interpretation section *supra*, and Kaufman '762 at the title ("swab" as defined by the American Heritage Dictionary as "a small piece of absorbent material attached to the end of a stick or wire and used for cleansing or applying medicine"), Figures 1-7 and Figure 8 and the description of the Figures on the first page, i.e. '762 teaches a swab comprising a straight, flat, elongate body, i.e. a first component, with opposite ends and rounded edges which body is wider than it is thick, see Figures 1-8 and has a square "cutout", i.e. a space of square shape space in the center of the upper and lower surfaces as seen in Figure 8, at each end of the body resulting in an length which is offset, i.e. the length of the space bottom, and the cutout at one end being inverse of that at the other, i.e. as seen in Figure 8 the notches are on opposite sides or inverse to each other, and an absorbent applicator material, see definition of "swab" *supra* again, i.e. a second component, attached at one end of the frame. It is noted that the claim does not require the square cutout at each end to be only at that one end nor that the cut out extends through the entire thickness of the end for a certain length and width. Therefore, as best understood, see Claim Language Interpretation section *supra*, the '762 reference includes all the structure of the claimed end product except for the body frame/stick being of plastic and an absorbent material attached at the other end of the stick/frame also. With regard to the language on lines 6-7, since the '762 body width creates a length to which the absorbent applicator material can be affixed, the '762 body is therefore considered to be necessarily and inevitably capable of providing the width as claimed on lines 6-7. With regard to the stick material being plastic and there being absorbent material at the other end too, see Bedford ' 994 which also

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teaches a swab as well as, see, e.g., Figures 2 and 3, the interchangeability of absorbent applicator material at both ends of the swab for that at just one end and that the swab stick of any length and cross-section can be made of any material including plastic. To make the absorbent applicator material at one end of Kaufman absorbent applicator material at both ends instead would be obvious in view of the interchangeability as taught by Bedford. To make the swab stick of Kaufman of plastic as taught by Bedford would also be obvious to one of ordinary skill in the art in view of the recognition that such plastic material is known as a material for forming swab sticks of any length and cross-section and the Kaufman stick being that of a swab and having a length and a cross section. In so doing, the end product contemplated by the product by process claim 1 is obvious from the product contemplated by the prior art, i.e. claim 1 is unpatentable even though the prior product may have been made by another process.

Response to Arguments

11. Applicant's remarks on pages 11-12 of the 5-8-06 response have been considered but are either deemed moot in that the issue discussed has not been reraised or deemed not persuasive for the reasons set forth supra.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The other cited prior art teaches various swabs/applicators.

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13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any new grounds of rejection were necessitated by the amendments made to claim 1.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
July 18, 2006